

PATENT ASSIGNMENT

Electronic Version v1.1

Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	LICENSE
CONVEYING PARTY DATA	
Name	Execution Date
MetaRam, Inc.	12/21/2009
RECEIVING PARTY DATA	
Name:	Netlist, Inc.
Street Address:	51 Discovery
City:	Irvine
State/Country:	CALIFORNIA
Postal Code:	92618
PROPERTY NUMBERS Total: 1	
Property Type	Number
Patent Number:	7472220
CORRESPONDENCE DATA	
Fax Number:	(949)567-6710
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>	
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Correspondent Name:	Orrick, Herrington & Sutcliffe, LLP
Address Line 1:	4 Park Plaza, Suite 1600
Address Line 2:	IP Prosecution Department
Address Line 4:	Irvine, CALIFORNIA 92614-2558
ATTORNEY DOCKET NUMBER:	16870.2001
NAME OF SUBMITTER:	Angela Wendel
Total Attachments: 7 source=Netlist license agreement#page1.tif source=Netlist license agreement#page2.tif source=Netlist license agreement#page3.tif source=Netlist license agreement#page4.tif	

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SETTLEMENT AND LICENSE AGREEMENT

This Settlement and License Agreement ("Agreement"), is made by and between Netlist, Inc., a Delaware corporation ("Netlist"), of Irvine, California on the one hand, and MetaRAM, Inc. a Delaware corporation ("MetaRAM"), of San Jose, California, on the other hand. Netlist and MetaRAM are sometimes referred to collectively herein as the "Parties."

RECITALS

A. WHEREAS, Netlist is in the business of providing computer memory modules and technology to major computer manufacturers and users.

B. WHEREAS, Netlist is the owner of U.S. Patent No. 7,289,386, entitled "Memory Module Detector," issued October 30, 2007 ("the '386 patent").

C. WHEREAS, Netlist filed a civil action in the United States District Court for the District of Delaware, alleging patent infringement of the '386 patent, entitled *Netlist, Inc. v. MetaRAM, Inc.* Case No. 1:09-cv-00165-GMS (the "Delaware Action").

D. WHEREAS, in the Delaware Action Netlist asserted that MetaRAM's DDR3 controllers and memory modules incorporating such controllers infringe the '386 Patent;

E. WHEREAS, MetaRAM is the owner of U.S. Patent No. 7,472,220, entitled "Interface Circuit System and Method for Performing Power Management Operations Utilizing Power Management Signals," issued December 30, 2008 ("the '220 patent").

F. WHEREAS, MetaRAM filed a civil action in the United States District Court for the Northern District of California, San Jose Division, alleging patent infringement of the '220

patent, entitled *MetaRAM, Inc. v. Netlist, Inc.* Case No. 3:09-cv-01309-VRW (the "California Action").

G. WHEREAS, the Parties now desire to resolve and settle the claims and counterclaims in both the Delaware Action and the California Action.

REPRESENTATIONS BY METARAM

1. MetaRAM represents that it is no longer an operating company and has ceased all operations as an ongoing company, and is no longer in the business of designing or selling the MetaRAM DDR3 controllers and has ceased all sales and design efforts.

2. MetaRAM represents that it has never commercially sold any MetaRAM DDR3 R-DIMM memory modules, but did create lab prototypes in small volumes.

3. MetaRAM represents that its accused MetaRAM DDR3 controller has not been commercially released, and MetaRAM has no intention of releasing or commercializing the MetaRAM DDR3 controller in the U.S or outside the U.S.

4. MetaRAM represents that its total sales of the MetaRAM DDR3 controller were less than \$50,000 and that all sales were to Hynix Semiconductor, Inc. ("Hynix") and were invoiced on or before the commencement of the Delaware Action.

5. MetaRAM represents that to the best of MetaRAM's knowledge and belief, Hynix has cancelled any project using the MetaRAM DDR3 controller because MetaRAM will no longer provide the controller.

6. MetaRAM represents that additional MetaRAM DDR3 controllers in the form of non-working or partially working engineering samples were supplied to Hynix and others.

7. MetaRAM represents that to the best of its knowledge and belief, Hynix has disposed of all MetaRAM DDR3 controller units and will not commercially release any of the engineering samples.

8. MetaRAM represents that it currently has a total of approximately 12,000 units of the MetaRAM DDR3 controllers in its possession and that it does not intend to sell or offer to sell these units or have any more made or manufactured.

NOW, THEREFORE, in consideration of the foregoing recitals and representations and the further promises, covenants and obligations hereinafter set forth, the Parties agree as follows:

AGREEMENT

9. MetaRAM will not sell, offer to sell, release, or commercialize the MetaRAM DDR3 controllers in the U.S. or outside the U.S.

10. The Parties hereby agree to execute mutual dismissals with prejudice of both the Delaware Action and the California Action, respectively. The Parties shall execute a Stipulation to Dismissal of the Action in the form attached hereto as Exhibit A, and the same shall be filed with the appropriate court, along with a proposed Order of Dismissal in the form attached hereto as Exhibit B, within five (5) days of the execution of this Agreement.

LICENSE

11. Each Party hereby licenses the other Party, as follows:

- a) Netlist hereby licenses MetaRAM for the '386 Patent (The "Netlist '386 License to MetaRAM") upon the terms and conditions described in paragraph 11(c) below;
- b) MetaRAM hereby licenses Netlist for the '220 Patent (The "MetaRAM '220 License to Netlist") upon the terms and conditions described in paragraph 11(c) below;
- c) As to both the Netlist '386 License to MetaRAM and the MetaRAM '220 License to Netlist, the rights presently conveyed to each respective licensee pursuant to this License will vest and take effect immediately if and only if both of the following two conditions occur:

(i) the licensor sells, grants, conveys or otherwise transfers any interest in the licensed patent (including without limitation an ownership interest or a license) in whole or in part to a third party, and

(ii) suit is initiated against the licensee on the licensed patent by the third Party, with or without the participation of the licensor as co-plaintiff.

(d) Upon and only upon the occurrence of both conditions 11(c)(i) and (c)(ii) the licensee will have an irrevocable, worldwide, non-exclusive, and fully paid up right to make, use, have made, sell, offer for sale, and/or import any product, process, method, apparatus or other embodiment of an invention claimed in the licensed patent, and any suit initiated against the licensee by the third party on the licensed patent will be barred, including as to acts of the licensee occurring before the occurrence of conditions 11(c)(i) and (c)(ii).

(e) Notwithstanding whether conditions 11(c)(i) and (c)(ii) have occurred at the time of a transfer of any interest in either of the licensed patents, this License will run with and is not severable from the licensed patent, and in the event of a transfer of any interest in either licensed patent, this License will bind any transferee of such interest.

(f) The Netlist '386 License to MetaRAM and the MetaRAM '220 License to Netlist each encompass these United States patents only and do not include any divisional, continuation, or continuation-in-part applications of these patents or any corresponding foreign patent rights.

(g) Within ten (10) days of the execution of this Agreement, Netlist and MetaRAM will record this Agreement in the Assignment Branch of the United States Patent & Trademark Office and will each provide a copy of the recorded license and the corresponding Notice of Recordation to the other.

12. Neither the Netlist '386 License nor the MetaRAM '220 License provided pursuant to paragraph 11 of this Agreement can be sublicensed, sold, assigned or otherwise transferred by the respective licensee thereof, all of which are expressly prohibited.

13. Each of the Parties hereby releases and discharges the other Party, and their respective employees, officers, directors, members, representatives, attorneys and agents, as well as any parent, affiliate and subsidiary, and its respective employees, officers, directors, members, representatives, attorneys and agents, from all claims and counterclaims, demands, obligations, liability, damages, costs, expenses, offsets and/or recoupment of any kind, known or unknown, existing as of the Effective Date of this Agreement including any such claims arising out of the claims and counterclaims asserted in either the Delaware Action or the California Action or which could have been raised in such actions.

14. The Parties acknowledge that there is a risk that subsequent to the execution of this Agreement, each may discover, incur, or suffer claims which were unknown or unanticipated at the time this Agreement is executed, and which if known on or before the Effective Date of this Agreement being executed may have materially affected the decision to execute this Agreement. The Parties acknowledge and agree that by reason of the releases contained herein, each is assuming the risk of such unknown claims and agree that this Settlement Agreement applies thereto. In connection therewith, each Party expressly waives the benefits of Section 1542 of the California Civil Code, which section provides as follows, and any laws similar affect applicable in any jurisdiction:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT
TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING
THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE
MATERIALLY AFFECT HIS SETTLEMENT WITH THE
DEBTOR”

15. Each Party further acknowledges that this Agreement, as a settlement, does not constitute evidence or an admission of liability, infringement, non-infringement, validity,

invalidity or wrongdoing with respect to either the '386 patent or the '220 patent or any allegations made in either the Delaware Action or the California Action.

16. Each Party represents and warrants that it has the sole right and exclusive authority to execute this Agreement and has not sold, assigned, transferred, conveyed or otherwise disposed of any claim, right, debt, liability, demand, obligation, account, reckoning, cost, expense, lien, loss, damage, action or cause of action, or any portion thereof or interest therein, relating to or arising out of any matter covered by this Agreement.

17. Each Party further acknowledges that it has read the terms of this Agreement and fully understands and is familiar with them and aware of their legal effect. Each Party was involved in the drafting of this Agreement and has had it reviewed by competent counsel. Any ambiguities should not be construed against either Party.

18. This agreement shall be binding upon the successors, agents, employees, heirs, devisees, administrators and executors of the parties.

19. This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the United States (if federal law applies) and the State of California (if state law applies). The venue of any action to enforce this Agreement shall be Los Angeles, California or San Francisco, California, at the option of the party seeking enforcement.

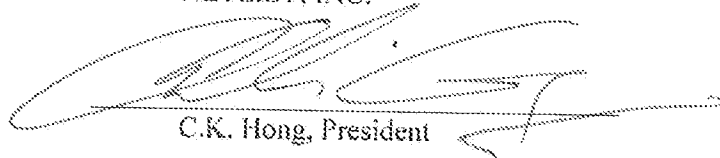
20. This Agreement constitutes the entire agreement between the Parties and supersedes and replaces all prior or contemporaneous negotiations and proposed agreements, whether oral or written, pertaining to the subject matter of this Agreement. No waiver or modification of any of the terms or provisions of this Agreement shall be valid unless contained in a writing signed by the Parties.

21. This Agreement shall be deemed effective as of the date upon which it is jointly executed. It may be executed in any number of identical counterparts, each of which shall be deemed an original, but all of which when taken together, shall constitute one and the same instrument. The Effective Date shall be the date of the last to sign this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates written below.

NETLIST, INC.

Dated: December 21, 2009


C.K. Hong, President

METARAM, INC.

Dated: December 18, 2009


Suresh Rajan, President